

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 10646 of 2005

Between:

M/s. Balaji Galvanising Industries Ltd.,

5-4-100 & 101/A, M.G. Road,

Secunderabad – 500 003.

..... PETITIONER

AND

1. The Commissioner of Commercial Taxes,

Government of Andhra Pradesh, Hyderabad.

2 Government of Andhra Pradesh rep by its

Principal Secretary (Revenue) CT Department,

Secretariat Building, Hyderabad.

3 Commercial Tax Officer, Ramgopalpet Circle,

Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate Writ or order or direction, more particularly in the nature of Writ of Mandamus declaring the impugned proceedings of the 1st respondent in CCT Ref. No. AI (1)/1125/2004 dt 4-10-2004 and CCT Ref. No. AI(1)/1125/2004 dt 16-04-2005 classifying the commodity “stainless steel wire” as an article of stainless steel taxable @ 12% under entry 10 of VI the Schedule to the APGST Act as illegal,

arbitrary and contrary to the provisions of the act and also to the settled legal principles and set a side the same and declare that the commodity "stainless steel wire" is a declared goods taxable @ 4% under sub item XV of entry 2 of the III rd schedule of the APGST Act read with Section 14 and 15 of CST Act and pass such other order or orders this Hon'ble Court may deem fit and proper in the circumstances of the case

for the Petitioner: Mr. Bhaskar Reddy Vemireddy, Advocate.

For the Respondents: Mr. K. Raji Reddy, Special Standing Counsel for Commercial Tax.

The Court at the stage of admission made the following :

ORDER: (per Sri B. Sudershan Reddy, J)

The petitioner is a private limited company incorporated under the Indian Companies Act, 1956 and is carrying on business in manufacture and sale of stainless steel wire. It is a registered dealer under the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act') and the Central Sales Tax Act, 1956. It is an assessee on the rolls of the 3rd respondent – Commercial Tax Officer. The petitioner claims to be a reputed manufacturer of 'stainless steel wire'. The departmental authorities including the 3rd respondent – assessing authority, according to the petitioner, are treating the commodity 'stainless steel wire' as falling under Entry 10 of VI Schedule of the Act and levying tax at the rate of 12%. It is the case of the petitioner that the goods classified under the VI schedule are taxable at multi point on the portion of value addition and are called VAT goods. The tax payable under the state law in respect of any sale or purchase of such goods inside the State shall not exceed 4% of the sale or purchase price thereof and such tax shall not be levied at more than one stage. It is the case of the petitioner that the assessing authority ought not to have classified the stainless steel wire as falling under Entry 10 of VI Schedule taxable at 12% but ought to have classified as declared goods falling under sub item XV of Entry 2 of the III Schedule of the Act.

Be that as it may, the petitioner made a representation on 19-03-2004 addressed to

the 1st respondent – Commissioner of Commercial Taxes requiring him to interfere and clarify the issue to the concerned sales tax assessing authority to assess the said item of stainless steel wire under the category of iron and steel as declared goods chargeable to tax at the rate of 4% in the larger public interest and natural justice. In response to the said representation, the Commissioner of Commercial Taxes informed the petitioner clarifying that articles of stainless steel wires are taxable at 12% at the point of first sale under item 10 of the sixth schedule to the Act with effect from 01-01-2000. Being dissatisfied with the said communication from the Commissioner, the petitioner once again made a further representation on 08-11-2004 requesting him to reconsider the issue. The petitioner placed reliance upon the judgment of the Madras High Court in ***Hindustan Wires Limited Vs. State of Tamilnadu***. The Commissioner having reconsidered the issue once again reiterated his view that stainless steel wires are articles of stainless steel and are taxable at the rate of 12% at every point of sale in the State under item 10 of the sixth Schedule to the Act with effect from 01-01-2000. The petitioner filed the present writ petition challenging both the orders passed by the Commissioner.

It is unnecessary to refer the averments once again as we have noted them supra. However, learned counsel for the petitioner, Sri V. Bhaskar Reddy submits that the Commissioner before disposing of the representation ought to have given an opportunity of being heard to the petitioner and ought to have passed a reasoned order as to why and how the commodity 'stainless steel wire' is taxable at 12% under item 10 of the sixth schedule to the Act. Learned counsel further submitted that the impugned orders passed by the Commissioner without assigning any reasons in support of the conclusion drawn by him are void in law. According to the learned counsel for the petitioner, it is eminently a fit case for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Reliance has been placed upon the decision of the Supreme Court in ***FILTERCO v. COMMR. OF SALES TAX***.

Learned Standing Counsel for the Department submits that the 1st respondent – Commissioner is not under any legal or statutory obligation to issue clarifications or

directions at the instance of any dealer. The submission is that Section 42A of the Act does not confer any right upon a dealer to seek clarifications or directions from the Commissioner. Section 42A does not provide for any remedy to the petitioner.

We have considered the rival submissions and heard the matter in detail even at the stage of admission. Section 42A of the Act which is relevant for our purpose reads as under:

“42A. Instructions to Subordinate Officers:-- The Commissioner may, from time to time, issue such orders, instructions and directions not inconsistent with the provisions of this Act or the rules made thereunder to his subordinate officers as he may deem fit, for the proper administration of the Act and such officers and all other persons employed in the enforcement of the Act, shall comply with such orders, instructions and directions.

Provided that no such orders, instructions or directions shall be such as to interfere with the discretion of any appellate authority in exercise of its appellate functions.”

That a plain reading of Section 42A of the Act reveals that the same confers power upon the Commissioner to issue orders, instructions and directions not inconsistent with the provisions of the Act or the rules made thereunder to his subordinate officers for the proper administration of the Act. The Commissioner being the Head of the Department is conferred with such powers to issue directions for the proper enforcement of the provisions of the Act. The directions that may be issued under Section 42A are general in their nature for the effective implementation of the provisions of the Act. Proviso to Section 42A clarifies that the Commissioner shall not issue orders, instructions and directions interfering with the discretion of any appellate authority in exercise of its appellate functions. What is otherwise implicit is made explicitly clear by the proviso. In our considered opinion, Section 42A of the Act does not confer any power upon the Commissioner to issue any directions or orders in any particular case and particularly in the manner that may amount to interfering with the exercise of the statutory or quasi judicial powers by the authorities under the Act.

Be it as it may, Section 42A of the Act does not confer any additional remedy other than an appeal and revision as provided for under the provisions of the Act upon any dealer. In such view of the matter, we hold that no dealer as a matter of right is entitled to invoke the jurisdiction of the Commissioner under Section 42A and seek directions or instructions with reference to a particular case as to how an assessment is to be made and at what rate the tax is to be levied and collected since the same is regulated by the statute. The assessment order is required to be passed by the assessing authority in accordance with the provisions of the Act and the rules which power is held to be quasi-judicial in its nature. In our considered opinion, Section 42A does not confer any right upon a dealer to insist the Commissioner to issue directions in a particular case which may amount to interfering with the discretion of the statutory or quasi-judicial power by the officers who are entrusted with a duty to administer. It is a different matter altogether that the Commissioner with a view to resolve apparent conflicts in the views taken by the officers may issue general instructions and circulars for the better administration of the provisions of the Act.

The Commissioner in the instant case was not obliged to respond to the application filed by the petitioner and issue any such order. The Commissioner could have as well rejected the application without expressing any opinion on the questions raised by the petitioner. He was not under statutory or legal obligation to issue such directions. The petitioner having invited the order cannot challenge the same in the judicial review proceedings. It is the petitioner who invited the order.

The judgment of the Supreme Court upon which reliance has been placed by the learned counsel for the petitioner in no manner supports the submission made by him. Section 42-B of the Madhya Pradesh General Sales Tax Act, 1958, which had fallen for the interpretation reads as under:

“Section 42-B. *Determination of disputed questions.* ---(1) If any question is raised by a dealer in respect of the rate of tax on any

goods, the Commissioner shall, in accordance with such procedure as may be prescribed, make an order determining the rate of tax on such goods.

(2) Any order passed by the Commissioner under sub-section (1) shall be binding on the authorities referred to in section 3 in all proceedings under the Act except appeals”.

A plain reading of Section 42-B of the said Act makes it abundantly clear that the Commissioner was duty bound to determine the rate of tax on any goods, if any question in that regard is raised by a dealer. The expression used ‘the Commissioner shall, in accordance with such procedure as may be prescribed, make an order determining the rate of tax on such goods’ is so clear leaving no discretion to the Commissioner to refuse to determine the disputed question raised by the dealer. Any order passed by the Commissioner under sub-section (1) is binding on the authorities in all proceedings under the Act except appeals. In contra distinction, Section 42A of the Act does not confer any right upon the dealer to raise any question in respect of rate of tax on any goods. Therefore, the request, if any, made by a dealer is not necessarily to be entertained by the Commissioner since no such right is conferred.

Sri V. Bhaskar Reddy, learned counsel for the petitioner, however, made an attempt to contend that the 1st respondent – Commissioner is likely to deviate from the earlier orders passed by him and take a different view and may impose tax at the rate of 12% instead of 4%.

We do not propose to express any opinion whatsoever since the authority is yet to pass an assessment order in accordance with law. It shall be open to the petitioner to raise all the objections including the contentions raised in this writ petition so far as the merits are concerned, which shall be considered by the assessing authority in accordance with law uninfluenced by the observations, if any, made in this order.

The Writ Petition is accordingly dismissed.

(B. Sudershan Reddy, J)

09-06-2005

(Ramesh Ranganathan, J)

ks/bsv

To

1 The Commissioner of Commercial Taxes,

Government of Andhra Pradesh, Hyderabad.

2 The Principal Secretary (Revenue) CT Department,

Government of Andhra Pradesh, Secretariat Building,

Hyderabad.

3 Commercial Tax Officer, Ramgopalpet Circle,

Secunderabad.

4 Two CD copies.

5. Two CCs to the Government Pleader for Commercial Taxes,

High Court of A.P., Hyderabad (OUT)